

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROZANNA CAROSELLA and NATALIE	)	
PRET, and a class of similarly situated	)	No. 63251-5-I
persons,	)	
	)	DIVISION ONE
Appellants,	)	
	)	UNPUBLISHED OPINION
v.	)	
	)	
UNIVERSITY OF WASHINGTON,	)	
	)	
Respondent.	)	FILED: February 16, 2010

---

Appelwick, J. — Carosella, representing a certified class of extension lecturers at the University, appeals the entry of summary judgment in favor of the University on her breach of contract claim. Carosella claims the University breached its contractual obligation under the faculty salary policy to pay two percent merit increases to the English Language Program’s meritorious extension lecturers during the 2002-2003 academic year. Because the contractual obligation does not apply to the extension lecturers, the University had no duty to pay merit increases to them. We affirm.

### FACTS

In 2002, the Legislature did not appropriate funds for University employee pay raises. Laws of 2002, ch. 371, § § 601(2)(a), (c), (f), 604. Although the University Handbook’s “Faculty Salary Policy” (FSP) guaranteed raises for “meritorious” faculty, the University of Washington’s (the University) board of regents did not provide pay raises for its faculty and staff out of internal funds. Several years later, two class actions ensued. The first, brought by Professor

Duane Storti on behalf of various faculty in academic departments (Storti Class), concerned whether the University had breached a contractual obligation under the FSP when it failed to pay merit increases to meritorious faculty during the 2002-2003 academic year. The University settled with Storti and the Class (Storti Settlement), comprised of all faculty with ranks of professor, professor without tenure, associate professor, associate professor without tenure, assistant professor, assistant professor without tenure, acting assistant professor pending Ph.D., research professor, research associate professor, research assistant professor, lecturer full-time, senior lecturer, principal lecturer, artist in residence, senior artist in residence, and clinical professors holding multi-year promotional pathway appointments.

After the Storti Settlement, a part-time lecturer by the name of Susan Helf sued the University, arguing that part-time lecturers (Helf Class) should have been included in the Storti Class. Part-time lecturers had been excluded from the Storti Class on the mistaken belief that part-time lecturers had not been subject to merit reviews as required by the FSP. The University settled with the Helf Class after discovering that some of the University's schools and colleges had conducted merit review of their part-time lecturers.

On April 24, 2008, Carosella and Pret initiated a class action lawsuit on behalf of the meritorious extension lecturers who the University had employed in the English Language Programs (ELP) during the 2001-2002 and 2002-2003 academic years. ELP is a subunit within the Educational Outreach program at

the University (formerly called UW Extension). Educational Outreach employs more than one thousand extension lecturers. Of those thousand, approximately 75 are employed on a quarterly or annual basis in the ELP. Appointment to teach as an extension lecturer in the Educational Outreach program is entirely separate from appointment to the faculty in an academic unit of the University. The employment relationship between the ELP extension lecturers and the University is governed by their contracts and the ELP Operations Manual.

The complaint contained one cause of action: a breach of contract claim. Specifically, Carosella and Pret alleged the University breached a contractual obligation under the FSP, a part of the University Handbook stating that a salary increase “shall be granted to provide an initial minimum equal-percentage salary increase to all faculty following a successful merit review.”

Carosella and Pret moved for class certification. The court certified the class and appointed Carosella and Pret (hereinafter “Carosella”) as the class representatives. The class is defined as “all persons whom the University employed during both the 2001-2002 and 2002-2003 academic years as Extension Lecturer, whether Full- or Part-Time, on an annual or quarterly appointment, and who were not deemed unmeritorious during the 2001-2002 academic year, and whose rate of compensation the University did not augment by a two percent merit increase for the 2002-2003 academic year.”

After discovery, both parties moved for summary judgment. On March 6, 2009, the court entered an order denying Carosella’s motion and granting the

University's. The basis of the University's summary judgment motion was that extensions lecturers are not University "faculty"; therefore, the FSP does not apply to them.

## DISCUSSION

Carosella maintains the trial court improperly granted summary judgment in favor of the University. We review summary judgment orders de novo. Hadley v. Maxwell, 144 Wn.2d 306, 310, 27 P.3d 600 (2001). Summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). When reviewing an order of summary judgment, we engage in the same inquiry as the trial court, considering the facts and all reasonable inferences from the facts in the light most favorable to the nonmoving party. Right-Price Recreation, LLC v. Connells Prairie Cmty. Council, 146 Wn.2d 370, 381, 46 P.3d 789 (2002). Neither of the parties' summary judgment motions contend there are genuine issues of material fact. Rather, the contention is whether, as a matter of law, the extension lecturers may properly be defined as "faculty," thereby entitling them to the annual merit increase promised in the FSP.

Interpretation of an employee contract is governed by the rules of contract interpretation. Kloss v. Honeywell Inc., 77 Wn. App. 294, 298, 890 P.2d 480 (1995). Under the objective theory of contract interpretation, a court must attempt to ascertain the intent of the parties from the ordinary meaning of the words within the contract. Hearst Commc'ns, Inc. v. Seattle Times Co., 154

Wn.2d 493, 503, 115 P.3d 262 (2005). Under the context rule, courts may consider extrinsic evidence to determine the specific words and terms used, but not to show an intention independent of the instrument. Hollis v. Garwall, Inc., 137 Wn.2d 683, 694–96, 974 P.2d 836 (1999). Extrinsic evidence includes the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties, and the reasonableness of the respective interpretations urged by the parties. Seattle Times Co., 154 Wn.2d at 502.

Carosella's burden is to establish the following elements: (1) a statement in the Handbook that amounts to a promise of specific treatment in a specific situation, (2) justifiable reliance on that promise, and (3) breach of that promise. Korslund v. DynCorp Thi-Cities Servs., Inc., 156 Wn.2d 168, 184–85, 125 P.3d 119 (2005); Trimble v. Wash. State Univ., 140 Wn.2d 88, 94–5, 993 P.2d 259 (2000).

Carosella argues on appeal and in her motion for summary judgment that the first element—whether the University gave extension lecturers a promise of specific treatment in a specific situation—is resolved by the Storti litigation. While it is true that the University settled with the Storti Class on its claim of failure to abide by a promise of specific treatment—to provide a two percent merit salary increase to meritorious faculty—Carosella must first prove that the promise of specific treatment, which the University breached as to the class members in Storti, applied to extension lecturers. As Carosella herself explains,

there are two questions before the court: whether the FSP's mandate the the University pay meritorious faculty a minimum two percent merit increase applies to extension lecturers; and, *if so*, whether the University breached its contractual obligation to pay them the two percent merit increases during the 2002-2003 academic year?

As a threshold matter, Carosella has not demonstrated that the Handbook applies to extension lecturers at all. The Handbook establishes the authority of the colleges and schools, provides for faculty organization, and guides academic administration.<sup>1</sup> Educational Outreach, of which ELP is a part, is not part of any school, college, or academic department. Appointment to teach as an extension lecturer in the Educational Outreach program is entirely separate from appointment to the faculty in an academic unit of the University. The employment relationship of ELP extension lecturers is governed by their contracts and by the ELP Operations Manual. Extension lecturers receive a letter of appointment, which sets forth the terms of their employment. Carosella's appointment letter does not make any reference to the Handbook.<sup>2</sup> Nor does the Educational Outreach Operations Manual incorporate by reference the Handbook.

However, even if the Handbook does govern the employment relationship of extension lecturers, the specific promise to provide merit increases does not

---

<sup>1</sup> The record contains an incomplete copy of the Handbook. The introduction, describing the purpose of Volume Two, can be found at <http://www.washington.edu/faculty/facsenate/handbook/Volume2.html>

<sup>2</sup> Nor does Pret's appointment letter reference the Handbook

apply to them. Chapter 21, titled “Organization of the University Faculty,” contains a list, in section 21-31, titled “Membership in the Faculty.” The list defines “faculty” as consisting of: the president, the vice presidents, the professors, the associate professors, the assistant professors, the instructors, the teaching and research associates, the principal lecturers, the senior lecturers, the senior artists in residence, the lecturers, and the artists in residence, whether serving under visiting, acting, research, clinical or affiliate appointment, “whether serving part-time or full-time, and whether serving in an active or emeritus capacity.” Absent from this definition, particularly the list of modifiers at the end, is service in an extension capacity.

The specific language from which the duty to pay merit increase arises is located in chapter 24, titled “Appointment and Promotion of Faculty Members.” Section 24-57, titled “Procedural Safeguards for Promotion, Merit-Based Salary, and Tenure Considerations,” contains a footnote titled the “Faculty Salary Policy.” The FSP states, “All faculty shall be evaluated annually for merit and for progress towards reappointment, promotion and/or tenure, as appropriate. A faculty member who is deemed to be meritorious in performance shall be awarded a regular 2 [percent] merit salary increase at the beginning of the following academic year.”

The absence of extension lecturer from the list of faculty in section 21-31 suggests this class is not part of the faculty. Because extension lecturers do not fit the definition of “faculty,” the FSP does not apply to them. This conclusion is

buttressed by looking at the plain language and organization of the next sections and their titles.

The Handbook specifies different qualifications for faculty ranks than for those with extension appointments. Section 24-34, titled “Qualifications for Appointment at Specific Ranks and Titles,” further defines some of the terms used in section 21-31. “Lecturer” is an “instructional title that may be conferred on persons who have special instructional roles.” However, section 24-34 does not reference or define “extension lecturer” at all. Instead, section 24-36, titled “Qualifications for Extension Appointments,” specifically states that “Persons giving instruction in extension classes offered for academic credit shall have scholarly and professional qualifications equivalent to those required for the teaching of regular University classes.”<sup>3</sup> While the Handbook undoubtedly holds extension lecturers teaching extension classes for academic credit to similar standards as the non-extension faculty, this fact alone cannot serve to transport them into the Handbook definition of faculty. To the contrary, section 24-36 contemplates that persons employed as extension lecturers are not necessarily faculty. If “[p]ersons giving instruction in extension classes” were already faculty, section 24-36 would be superfluous.

Extension lecturers do not fall within the definition of faculty in the Handbook.<sup>4</sup> The FSP contained in the Handbook does not apply to extension

---

<sup>3</sup> This section does not use the term “extension lecturer.” The possibility arises that a faculty member, as defined in section 21-31, who would necessarily have the scholarly and professional qualifications mentioned in section 24-36, could also be a person giving instruction in extension classes.

<sup>4</sup> Carosella argues as an alternative that the University has a duty under the Educational

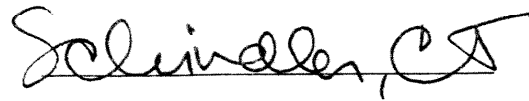
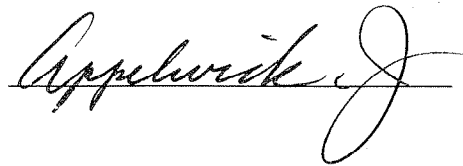
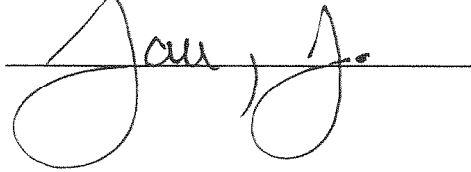


lecturers. We find nothing else in the record to support Carosella's argument that the University made a specific promise to provide annual merit increases to extension lecturers.

Because we conclude as a matter of law that no promise was made to the extension lecturers under the FSP, we need not reach the other two elements of Carosella's claim. The trial court properly granted summary judgment in favor of the University.

We affirm.

WE CONCUR:



---

Outreach program's Operations Manual to provide them with pay raises. We find no merit in this argument. First, Carosella's complaint specifically alleges that the duty to provide pay increases arises from the FSP. Further, the pertinent language in the Operations Manual does not create a mandatory duty to provide an annual merit increase, nor does it create a mandatory duty to provide one if the University faculty receives one. Rather, whether to provide an annual merit increase remains a discretionary function of the vice-provost of the Educational Outreach program:

The state legislature occasionally awards merit raises to University faculty. Because [the University] Educational Outreach is a self-sustaining unit, it can make independent decisions regarding salary increases and merit pay as long as they don't exceed those awarded by the University. The Vice-Provost normally follows the decisions made for the entire University, assuming the revenue is available. ELP instructions have consequently received the same salary increases as other faculty.

Finally, the Operations Manual is not part of the Handbook.